

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPH BEATTY)	
Claimant)	
VS.)	
)	Docket No. 241,917
YOR WIC CONSTRUCTION)	
Respondent)	
AND)	
)	
BITUMINOUS CASUALTY CORPORATION)	
Insurance Carrier)	

ORDER

Claimant appealed Administrative Law Judge Bryce D. Benedict's September 10, 1999, preliminary hearing Order Denying Compensation.

ISSUES

Administrative Law Judge denied claimant's request for the appointment of an authorized treating physician to treat claimant's thrombophlebitis left leg condition and chronic deep venous thrombosis of both lower extremities. The Administrative Law Judge found that claimant, while employed by the respondent, had suffered temporary exacerbations of those conditions. The Administrative Law Judge further found that respondent had actual notice of the temporary exacerbations. But the Administrative Law Judge denied appointment of an authorized treating physician, finding that the record had not proven claimant needed surgery.

Claimant contends that his work activities while employed by the respondent permanently aggravated his left lower extremity thrombophlebitis and bilateral lower extremity chronic deep venous thrombosis. Claimant also argues that the claimant's testimony along with the medical records and reports admitted into evidence at the preliminary hearing prove that claimant is in need of medical treatment for this permanent aggravation.

But respondent contends the Appeals Board does not have jurisdiction to review the issues raised by the claimant from an appeal of a preliminary hearing. Respondent argues

the issue is not whether claimant suffered an accidental injury while working for the respondent but is an issue of the nature and extent of the particular injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

Claimant has a long history of deep venous thrombophlebitis of the left lower extremity. He started working at Ft. Riley, Kansas, as a rough-in plumber on a government housing project in March 1998. Claimant continued to work on this project until he was terminated by the respondent for excessive absenteeism on February 4, 1999. Claimant attributes the absenteeism to his thrombophlebitis condition.

Claimant testified he worked for at least two other constructions companies before he commenced working for the respondent on the same project. The other construction companies either took bankruptcy or because of financial problems could not continue to work on the project. Claimant testified and the employment records admitted into evidence at the preliminary hearing indicate that claimant started working for the respondent on or about December 7, 1998.

Claimant's immediate employer before he started working for the respondent was Rocco LTD. He started working for Rocco LTD on October 15, 1998. While he was working for Rocco, claimant testified his thrombophlebitis was aggravated because he had to stand all day at work on cement and wood floors.

Claimant testified on November 9, 1998, he sought treatment at a local hospital's emergency room for swelling and pain in his lower extremities. Claimant was treated by Donald L. Morgan, D.O., who diagnosed thrombophlebitis of left lower extremity and chronic deep venous thrombosis of both lower extremities. During his hospitalization, he was treated with oral anti-coagulant and evaluated by a surgeon. But the surgeon did not believe claimant needed surgery. Dr. Morgan discharged claimant from the hospital on November 16, 1998, and released him to return to work without restrictions on November 18, 1998.

Claimant returned to work and worked until he was discharged by the respondent on February 4, 1999. Claimant testified that after he was hospitalized and returned to work he continued to have pain and swelling in his legs. Because of the pain and the swelling, claimant testified he had to take time off from work in order to get enough relief from the pain to return to work. Claimant indicated the reason respondent terminated him was because of excess absenteeism caused by his leg problems.

After reviewing the claimant's testimony, the medical records and reports admitted into evidence at the preliminary hearing, the Administrative Law Judge found claimant had suffered only temporary exacerbations of his preexisting thrombophlebitis condition while

he worked for the respondent. The Administrative Law Judge also found claimant was not in need of medical treatment.

The dispute before the Appeals Board is not whether claimant suffered an accidental injury while employed by the respondent, but is whether the injury was temporary or permanent. The second issue is whether claimant is in need of medical treatment for either the temporary or permanent injury. Therefore, the Appeals Board finds the dispute in this matter relates to the nature and extent of claimant's injury and not whether the accidental injury arose out of and in the course of his employment.

The Appeals Board's jurisdiction to review preliminary hearing findings is limited to allegations that Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested.¹ This includes review of issues identified as jurisdictional issues.²

The issue dealing with the nature and extent of claimant's injury is not a jurisdictional issue listed in the preliminary hearing statute. Also, the Administrative Law Judge did not exceed his jurisdiction as the preliminary hearing statute authorizes the Administrative Law Judge to decide issues dealing with medical treatment. Therefore, the Appeals Board concludes that the issues currently before the Appeals Board are not jurisdictional issues and the Administrative Law Judge did not otherwise exceed his jurisdiction in deciding those issues.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of Administrative Law Judge Bryce D. Benedict's September 10, 1999, preliminary hearing Order Denying Compensation, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Terry Torline, Wichita, KS
Bryce D. Benedict, Administrative Law Judge

¹See K.S.A. 1998 Supp. 44-551.

²See K.S.A. 1998 Supp. 44-534a.

JOSEPH BEATTY

4

DOCKET NO. 241,917

Philip S. Harness, Director